

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

\* \* \* \* \*  
\*  
UNITED STATES OF AMERICA \*  
\*  
v. \* 19-cr-142-01-LM  
\* June 11, 2021  
\* 9:10 a.m.  
\*  
NATHAN CRAIGUE \*  
\*  
\* \* \* \* \*

**SEALED** TRANSCRIPT OF JURY TRIAL  
DAY FIVE  
BEFORE THE HONORABLE LANDYA B. MCCAFFERTY

APPEARANCES:

For the Government: John S. Davis, AUSA  
Aaron G. Gingrande, AUSA  
U.S. Attorney's Office

For the Defendant: Behzad Mirhashem, Esq.  
Dorothy E. Graham, Esq.  
Federal Defenders Office

Court Reporter: Susan M. Bateman, RPR, CRR  
Official Court Reporter  
United States District Court  
55 Pleasant Street  
Concord, NH 03301  
(603) 225-1453

## P R O C E E D I N G S

(CHAMBERS CONFERENCE)

THE COURT: All right. So I've just received document 130, which is the government's assented to motion to dismiss the case with prejudice, has the assent of defense, and that motion is granted.

So now I'll just bring the jury in and thank them for their service, say something nice.

Yes.

MS. GRAHAM: Could I just add one thing for the record, your Honor --

THE COURT: Yes.

MS. GRAHAM: -- that is not included in the motion.

Part of our agreement and consent to the dismissal was the condition that no federal criminal charges arising from the events in this case would be brought and that is our understanding, and there is no objection to that as well.

MR. DAVIS: We agree.

THE COURT: All right.

MR. MIRHASHEM: And there's a second matter, your Honor.

THE COURT: There's always another matter in this case.

MR. MIRHASHEM: This is the last one.

THE COURT: Okay.

1 MR. MIRHASHEM: The second matter is that yesterday  
2 in open proceedings the Court conducted an inquiry from the  
3 government about the nature of the evidence.

4 We received a report about that matter today in  
5 discovery from the government, and we have two issues with  
6 that.

7 One, we believe that the Court should obtain a copy  
8 of that document whether or not it's under seal so that the  
9 Court can see the full representation as far as what this  
10 report says, who knew, who didn't know, what William Carroll's  
11 involvement was, what Federal Agent Sean Roberts's involvement  
12 may have been.

13 All of that I think is matters that given the  
14 representations yesterday the Court should be aware of and  
15 make its own judgment of the report.

16 The other matter is we assented to sealing the CI  
17 packet. We do not believe that this report should be subject  
18 to that order. If the government wants to redact certain  
19 information, you know, we can discuss redaction, but the fact  
20 that our client who for two years has been prosecuted in this  
21 case, the government did not reveal that there was a -- this  
22 report says there was \$80 paid to this person who testified in  
23 grand jury against our client.

24 There is no -- this was discussed in open court  
25 yesterday. The Concord PD knew about it. The Concord police

1 officer says he would not have engaged -- I mean, the wording,  
2 I may be off, but he basically said he would have kept Agent  
3 Roberts posted about this.

4 This is discovery that was provided to us. It's  
5 nothing but individual drug sales by [REDACTED]. [REDACTED]  
6 has -- you know, every time one of our clients gets convicted  
7 the next day there's a press release on their website. This  
8 matters. I had a client who just lost a job two days ago  
9 based on their press releases. Why should there be any  
10 limitation on our client's ability to tell the world about  
11 what happened to him?

12 MR. DAVIS: Judge, we ask that the report -- we  
13 have no objection to the Court seeing it.

14 The report documents our phone call to Mr. Carroll  
15 late yesterday after court. The Department of Labor agent  
16 worked assiduously overnight to get it done, and we sent it  
17 within ten minutes to the defense. We have no objection to  
18 the Court seeing it of course.

19 We do ask that it be subject to the same protective  
20 order because it clearly reveals that [REDACTED] was signed up  
21 as a CI, and being signed up as a CI, and discusses how that  
22 came about in May of 2019, and so in the same spirit that the  
23 CI file was sealed, we would ask that this be sealed.

24 Now, if there are -- so we -- you can do a press  
25 release, whatever you want, about the case being dismissed,

1 but --

2 MR. MIRHASHEM: We don't do press releases. Our  
3 client -- my suggestion -- I'm sorry. I didn't mean to  
4 interrupt.

5 MR. DAVIS: Anyway, I mean, part of the point of  
6 this is to protect what's left of the confidentiality of [REDACTED]  
7 [REDACTED] cooperation. He didn't do anything wrong. [REDACTED]  
8 [REDACTED]. He worked for twelve days for the Concord police.  
9 There's nothing derogatory in their file about him. That  
10 cooperation has been kept secret, and we have investigated --  
11 at your request we've disclosed -- you have everything that we  
12 have about it. All we ask is don't put in the press that [REDACTED]  
13 [REDACTED] was a paid cooperator.

14 MR. MIRHASHEM: I'm certainly not going to put  
15 anything in the press. My concern is when our clients under a  
16 threat of prolonged imprisonment testify pursuant to a 5K  
17 agreement, the whole world learns at trial of their  
18 cooperation.

19 This person got paid to cooperate against our  
20 client. We don't have any interest in harming him. But when  
21 somebody signs up to cooperate and we have his cooperation  
22 agreement, then I guess in litigation we can see what he  
23 understood or didn't understand.

24 I talk to clients and say you can cut five years  
25 off your sentence, but you've got to know that then you're

1 going to go do the rest of the five years and everybody at the  
2 prison is going to know that you cooperated.

3 When people get paid to become informants, they are  
4 told we may need to disclose you to the defense. And  
5 here there was a -- you know, when the court's local rules on  
6 Giglio disclosure with respect to informants is actually  
7 followed, the defense gets that information to use at trial.

8 In this case the government has taken every  
9 possible step to -- you know, you reindicted two days before,  
10 like, a trial. Now you want to -- the government wants to  
11 terminate this and put a lid on it.

12 My job as my client's lawyer is I have his  
13 interests, but he has a right to get the discovery in this  
14 case and do with it as he sees fit unless the Court determines  
15 that it's subject to a protective order.

16 So my proposal as to that would be -- I'm obviously  
17 not going to, like, disclose anything and instruct our client  
18 not to disclose anything.

19 We can file motions as to whether or not this  
20 particular report should be completely sealed, completely  
21 unsealed, redacted, but if this had been disclosed to us as  
22 part of proper Giglio procedures, [REDACTED] would have  
23 testified. We would have cross-examined with this stuff.

24 We had a Concord Monitor reporter subpoenaed  
25 because [REDACTED] had given a statement to him that he was a

1 subcontractor. The lawyer for the Concord Monitor is sitting  
2 out there. The Monitor would have learned about it. It would  
3 have been all over the news. The Concord Monitor reporter was  
4 going to impeach this witness, and so that's the risk you take  
5 when you become a paid informant.

6 MR. GINGRANDE: I would like -- could I respond,  
7 your Honor?

8 The circumstances of this situation are extremely  
9 unique in that the government did not learn about the fact  
10 that he was a confidential informant until this trial had  
11 already begun and we were in the middle of him testifying.

12 THE COURT: Can I just stop you though? That's  
13 exactly the problem.

14 MR. GINGRANDE: Oh, no. I understand, your Honor.

15 THE COURT: Ultimately, there was a signal in the  
16 file that should have alerted the prosecution here there may  
17 be some exculpatory evidence or something strange about this,  
18 I'm going to look into this, and ultimately, [REDACTED] may not  
19 have ever testified and would not be in any danger at all if  
20 you had followed your obligations and you had pursued this  
21 with due diligence, even minimal diligence. It took one phone  
22 call, one phone call, and here we are, and [REDACTED] is in  
23 danger because of that fact, frankly.

24 So, ultimately, I will hear briefing on this. I  
25 think you could redact information to protect [REDACTED].

1 That's my thinking.

2 The issue is that he was being paid money for his  
3 testimony. Why does the world need to know he was a CI?

4 Ultimately, I think that is something that is  
5 something the public from Mr. Craigue's perspective can know  
6 and I don't think that is going to harm [REDACTED], but the fact  
7 that he was doing drug deals and getting paid I would be  
8 inclined to keep that from the public and protect him as much  
9 as we can.

10 MR. MIRHASHEM: I agree that -- we would not object  
11 to payments for drug deals as a CI being redacted as long as  
12 it is in the public record that this man was put on trial  
13 after a grand jury witness was paid to testify against him by  
14 a Concord police officer whose name should be public, there's  
15 no reason to seal his name, and that Agent Sean Roberts of the  
16 Department of Labor was, as described in the report, in some  
17 way involved. There's no reason to seal his name.

18 THE COURT: And I'm not saying that. I think you  
19 seal the CI information to protect [REDACTED].

20 MR. MIRHASHEM: We don't have an objection to that.

21 THE COURT: Okay.

22 MR. GINGRANDE: Your Honor, would you mind if I  
23 just --

24 THE COURT: I'm sorry. I did interrupt you. You  
25 go ahead.



1 MR. GINGRANDE: Yeah, just to finish the sentence.

2 It was a unique situation in that at the time that  
3 the government learned he was already on the stand. And  
4 ordinarily before we would put any witness on the stand, you  
5 know, and you're right, we would ordinarily have -- you know,  
6 had we had -- had we known and disclosed it, we would have had  
7 an opportunity to discuss [REDACTED] the consequences of  
8 his testifying. The fact that it would become known that he  
9 was a confidential informant, et cetera.

10 When we learned this, he was in the middle of his  
11 testimony. The government couldn't speak to him at all and  
12 couldn't even inform him about what might come out. The fact  
13 that he would be the confidential informant, that fact might  
14 come out.

15 So [REDACTED] was put in a position where he would  
16 not know that this information, any of the information, the  
17 fact that, you know, apparently that he was even paid for that  
18 grand jury testimony, the fact that he was a confidential  
19 informant, that any of that would come out, and we certainly  
20 couldn't tell him because of the stance of this case.

21 So our position is feel free to blame the  
22 government, but don't put [REDACTED] in the position where all  
23 of the sudden he ends up -- you know, we had called him to  
24 testify and he didn't know what the implications of that would  
25 be because we didn't have the information to talk to him about

1 and get his informed consent, in other words, to be a witness.

2 So we don't believe that, you know, his -- he  
3 should be publicly just outed in that way.

4 THE COURT: And I think everybody agrees with that.

5 MR. GINGRANDE: Okay. All right.

6 THE COURT: All right. So we'll go out, we'll say  
7 hello and good-bye to the jury, I'll try to say something nice  
8 to them, and then we'll go home for the weekend.

9 All right. Thank you.

10 (CONCLUSION OF CHAMBERS CONFERENCE)

11 (IN COURT- JURY PRESENT)

12 THE CLERK: This is the United States versus Nathan  
13 Craigue. It is 19-cr-142-01-LM. Jury trial day five.

14 THE COURT: Good morning members of the jury.

15 This is I think our fifth day of this jury trial,  
16 and you have been so attentive and patient throughout. I  
17 thank you for that; as do the parties and counsel.

18 Something has come up and the trial is over. Your  
19 service is complete.

20 In short, the government discovered something that  
21 led them to dismiss the case against Mr. Craigue. So I am  
22 going to dismiss you this morning.

23 Understand, however, that I am grateful to each of  
24 you for your service. You served your country for the last  
25 five days. You served as officers of the court.

1           You must have noticed that every time you entered  
2 the courtroom or exited the courtroom everyone in the  
3 courtroom stood to honor you, to honor you for your role in  
4 this trial.

5           As you leave the courtroom today, we will all rise  
6 one final time. You deserve that honor.

7           Thank you for your service.

8           The jury is dismissed.

9           All rise for the jury.

10          THE COURT: Court is adjourned.

11          (Conclusion of trial 9:30 a.m.)  
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## C E R T I F I C A T E

I, Susan M. Bateman, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 7-8-21

/s/ Susan M. Bateman  
SUSAN M. BATEMAN, RPR, CRR